

17.08.00.00 - PROJECT CERTIFICATION

17.08.01.00 Definition

A Right of Way Certification is a written statement summarizing the status of all right-of-way-related matters with respect to a proposed construction project.

17.08.02.00 Purpose

The purpose of the Right of Way Certification is to document that real property interests have been or are being secured, and physical obstructions, including buildings, utilities, and railroads, have been or will be removed, relocated, or protected as required for the construction, operation, and maintenance of the proposed project. The Right of Way Certification also documents that right of way activities were conducted in accordance with applicable policies and procedures.

17.08.03.00 Use of This Chapter

When a Local Public Agency (LPA) performs right of way activities on a portion of a state highway, or on a federally assisted local project, the LPA prepares the Certification as outlined in this chapter. When an LPA performs right of way activities on any project with state funds (STIP) involved, the LPA prepares the Certification as outlined in this chapter. Where a project is constructed on a state highway with private funding, the developer prepares the Certification as outlined in this chapter. Where an Encroachment Permit onto the state highway right of way is required for construction to commence, a Certification consistent with policies outlined in this chapter must first be prepared and accepted.

17.08.04.00 Unusual Project Circumstances/Conflicts

“Unusual circumstances” are defined as any deviation from the requirements or standard practices outlined in this chapter. When there are unusual circumstances in a project, a full explanation shall be forwarded to the Region/District Division Chief, R/W, for approval. The request shall be forwarded to the Local Programs Coordinator at least three months prior to the project advertising date. The Approval should be included in the Certification or in an attachment and made a part of the Certification.

17.08.05.00 Projects Requiring a Right of Way Certification

The Right of Way Certification provides the assurances that the LPA or developer has or will have possession of the required right of way by a given date. Certification is required before the following types of projects may be advertised:

- A. State-Advertised Projects - All local streets and roads projects that will be advertised by the state require a Right of Way Certification.
- B. Federal-Aid Projects Advertised by an LPA - Any project that has federal funding in either the right of way or construction phase must have a Right of Way Certification.
- C. LPA Projects with State Funding (STIP) - All local streets and roads projects that have State funding only must have a Right of Way Certification.
- D. LPA Projects with no State or Federal funding - All local streets and roads projects that are funded with local funds only should have a Right of Way Certification.

- E. Privately Developed Projects on a State Highway - A Right of Way Certification is required from a developer prior to receiving an Encroachment Permit to construct, regardless of whether there is a Highway Improvement Agreement or not.
- F. Cooperative Agreement Projects - Where the right of way is acquired by an LPA, the LPA must provide the Right of Way Certification in the Department's format and must address all the requirements outlined in this chapter.

17.08.06.00 **Time Requirement for Right of Way Certifications Requiring FHWA Approval**

The LPA must transmit a Certification for all Local Assistance federal-aid projects (off the SHS) to the District Local Assistance Engineer (DLAE) for review at least three months prior to the project advertising date. Certifications for projects on the Interstate Highway System must be forwarded to the FHWA a minimum of 15 working days prior to the project advertising date.

In those cases where a project advances to advertising on a Certification No. 3, the Certification must be upgraded to a Certification No. 1 or 2 before the bids can be opened. The upgraded Certification is forwarded to the DLAE with a copy to FHWA (Interstate System Projects only) with a minimum of 15 working days prior to the bid opening.

In those rare cases where a draft of a Special Certification No. 3 With Work-Arounds is used, an "updated" Special Certification No. 3 With Work-Arounds (dated and signed) is required no later than three months prior to bid opening. A copy of the Certification is forwarded to the FHWA (Interstate System Projects only) no later than 15 working days prior to bid opening. For a full discussion of R/W Certifications and their usage, see Chapter 14, "Project Certification," in this manual.

17.08.07.00 **Time Requirements for Certifications to the Office Engineer**

For state-advertised projects not involving federal aid, four copies of the signed original Right of Way Certification should be sent to the HQ or District Office Engineer no later than two months prior to the proposed advertising date. If Certification has not been received by the fifth week prior to the proposed advertising date, the project will not be listed for advertisement as scheduled, unless prior arrangements have been made through the HQ or District Office Engineer to list the project as "R/W Due." Listing of projects for advertisement with the Right of Way Certification "due" will only be used in exceptional cases. When used, it is incumbent on the Region/District to provide written assurances that the Right of Way Certification will be received by the Office Engineer on a certain date no less than 15 working days prior to the scheduled advertising date.

17.08.08.00 **Updating the Right of Way Certification**

Right of Way Certifications prepared for state-advertised projects shall be updated when:

- A. The Certification is one year old and the project it was prepared for has yet to be advertised,
- B. At the request of the Project Manager or Project Engineer,
- C. When dates or anticipated actions are no longer consistent with the current date of the Certification,
- D. Any changes in project scope or right of way requirements,
- E. When project description is no longer consistent with the PS&E.

17.08.09.00 **Corrections, Additions, and Deletions to Certification**

The Department shall not take action on verbal requests to alter significant, factual data in a Certification. There must be a written request from the LPA describing any change required. This request must then be attached to and made a part of the original Certification. Revised Certifications must have the word "Revised" clearly stamped in the upper center of the front page.

17.08.10.00 **Functional Monitoring and Record Retention**

R/W functional monitoring of LPA projects must be documented in the Region/District R/W Local Programs Project Coordinator's files. Such monitoring information, together with the original LPA or developer Right of Way Certification and any pertinent correspondence, will be retained by the Region/District R/W Local Programs unit in accordance with the Standardized Records Disposition Schedule for R/W Project Files. Also, a copy of the original Certification should be retained in the Local Programs project files.

17.08.11.00 **Procedures for Certification of Privately Funded Projects on the State Highway System**

Government Code Section 14529.13 requires the Department to accept the completed project (tax-measure or locally or privately funded) into the State Highway System provided the project was Department-approved, and the right of way was acquired and the project constructed in accordance with Department practices. To ensure compliance, the following procedures have been adopted for privately funded nonpublic projects:

- A. The developer provides the DLAE a Right of Way Certification (Exhibit 17-EX-16) prior to state's granting an Encroachment Permit to the developer. This is required regardless of whether there is a highway improvement or not.
- B. The DLAE transmits the Certification to R/W for review and acceptance.
- C. The R/W Local Programs Coordinator verifies Certification statements and obtains a policy of title insurance where required from the developer prior to accepting the Certification.
- D. The R/W Local Programs Coordinator reviews and accepts the Certification on behalf of the District.
- E. The R/W Local Programs Coordinator notifies the Permit Section the Certification has been accepted and sends copies to the DLAE.
- F. The Encroachment Permit is then issued.

17.08.12.00 **Procedures for Certification of Projects Off the State Highway System Which Require No Additional Right of Way (No Right of Way Certification)**

17.08.12.01 **No Additional Right of Way Required**

It may be determined during the early stages of the project development process that no additional property rights or right of way are necessary. In that event, the local agency may proceed with certifying to the Department that no additional right of way is required. This is accomplished with a "No Right of Way Certification" (Exhibit 17-EX-17) which is completed in duplicate, signed by an authorized official from the local agency, and forwarded to the Department DLAE for acceptance.

NOTE: All of the questions on the "No Right of Way Certification" form must be answered "No." If any of the answers are "Yes," the use of the form for this project is inappropriate and the form should be returned to the local agency with instructions to use the regular Right of Way Certification form, which is intended for use in dealing with right of way matters.

17.08.12.02 **Certification Acceptance by the District Local Assistance Engineer**

The DLAE will review the “No Right of Way Certification” form. If no additional right of way is required, the local agency has answered “No” to all of the other questions on the Certification form, and the form is otherwise correctly completed, the DLAE will accept the Certification on behalf of the Department. A signed duplicate of the original Certification will be returned to the local agency.

17.08.13.00 **Prerequisites to Certification of a Project by an LPA**

Prior to issuing a Right of Way Certification, the LPA shall review the draft PS&E to confirm pertinent data. Included in this review should be such items as project identification, location description, work description, and special provisions relating to utility, railroad and/or right of way clearance coordination. The Certification also includes confirmation that right of way construction contract obligations are properly included in the PS&E, and confirmation that the right of way as shown on the construction plans is consistent with the LPA’s Certification.

Conflicts which could affect the construction contract such as utility, railroad, or clearance work to be done in coordination with construction must be identified in the Certification so that they can be called to the bidder’s attention in the Bid Documents (Contract Special Provisions).

17.08.13.01 **General Steps for an LPA Certification of a Project**

- A. LPA prepares the Right of Way Certification.
- B. LPA transmits the Certification to the DLAE.
- C. The DLAE sends the Certification, along with plans, maps, and other documents, to the Region/District R/W Local Programs Coordinator for review.
- D. The Coordinator reviews the LPA Certification for compliance with all applicable laws and procedures. Region/District functional monitoring records are included in the review. Further monitoring/review may be performed, if required, to check Certification accuracy.
- E. Staff time permitting, the R/W Coordinator conducts field reviews to confirm all occupants within the right of way have been relocated and arrangements for utility relocation are being completed in conformance with regulations.
- F. When the R/W Coordinator confirms that the LPA Certification statements are correct, the authorized R/W Representative will accept the Certification.
- G. The Coordinator returns the accepted original of the LPA Certification to the DLAE. A copy of the original Certification is kept in the Region/District Local Programs project file.
- H. If the Department is advertising the project, the DLAE forwards four copies of the accepted Certification with the PS&E submittal to the District Office Engineer for bid package preparation. If the PS&E has already been processed, a copy of the original Certification will be submitted to the HQ Division of Local Assistance.
- I. If any federal funds are involved in the project, HQ DLA processes the LPA Certification through the HQ Federal Aid Branch. In the event the project in question is on the Interstate System, the Federal Aid Branch forwards the Certification to the Federal Highway Administration.

17.08.13.02 **Certification Levels**

There are four levels of certification: Certification Nos. 1, 2, and 3, and Special Certification No. 3 With Work-Arounds. These levels correspond to the degree of control of the right of way that has been achieved for the project as outlined in 23 CFR Sections 635.309(c) 1, 2, or 3, respectively.

For a full discussion of these Certifications and their usage, see Chapter 14, "Project Certification," in this Manual.

17.08.13.03 **Right of Way Certification Process in the Region/District**

Right of Way Certification on LPA projects that will be advertised by the state will be handled in accordance with Sections 14.02.07.01 and 14.02.07.02 of the R/W Manual.

17.08.14.00 **Certification Format**

The method of Certification as specified under 23 CFR 635.309C entitled, "Physical Construction Authorization," is applicable to all federal-aid construction projects. The format also applies to all special-funded projects regardless of funding.

LPA Right of Way Certifications for all projects will be made using the Certification format shown in Exhibit 17-EX-18, with the exception of the use of the "No R/W Certification" previously described in Section 17.08.12.00. The LPA should use only those portions of the format applicable to the certification level being prepared and the project being certified. The format contains specific wording required by the Federal Highway Administration. Changes made in the wording could invalidate the Certification. Any deviation from the format or the wording must be fully explained in the Certification and have prior Region/District R/W Local Programs' approval. Privately funded projects may be certified using the Certification format shown in Exhibit 17-EX-16.

17.08.14.01 **Federal Aid in Right of Way and Utilities**

When there is any federal aid in the right of way cost of a project to be advertised by the state, the Right of Way federal-aid project number(s) will be shown on the Right of Way Certification. If there is no federal aid in the right of way cost, the Right of Way Certification shall show "None." The Right of Way federal-aid project numbers are available from the Region/District's R/W Planning and Management unit.

Occasionally when the project is to be certified, the federal-aid project number for utility relocation may not have been received. In this case, put a note on the Certification stating, "Utilities Federal-Aid No. Pending."

The HQ or District Office of Office Engineer will add the Construction federal-aid project number to the Right of Way Certification at the time the project is listed for advertising as appropriate.

17.08.14.02 **Required Right of Way**

All property rights required for a project must be reflected in the Right of Way Certification. Parcels to be included in a Right of Way Certification are regular right of way parcels acquired by deed, Final Order of Condemnation, Order for Possession, Right of Entry, Agreement for Possession and Use, license, permit, or other acquisition documents used by certain governmental entities.

Temporary rights must also be listed in the Certification. These include Temporary Easements, Temporary Permits to Enter (Or Enter and Construct), etc. It is important to include the expiration date of any temporary rights in the Certification so they may be evaluated in terms of the final construction schedule.

17.08.14.03 **Certifications with Agreements for Possession and Use or Rights of Entry**

Certifying a project where Agreements for Possession and Use or Rights of Entry are used to control right of way should be minimized to the greatest extent possible. Such Agreements may be used sparingly, and only after an appraisal has been completed and the initial offer of settlement has been presented to the Owner.

Agreements for Possession and Use or Rights of Entry obtained prior to making the first written offer can be used *only* to certify control of right of way in emergency or other justified situations. If an LPA believes it is necessary to solicit these types of agreements from an Owner prior to completion of the appraisal and making the first written offer, they must obtain the prior approval of Region/District R/W Local Programs Coordinator. Specific guidelines for the use of Agreements for Possession and Use and Rights of Entry are found in Chapter 8, "Acquisition," of this R/W Manual.

LPA requests to certify projects utilizing such Agreements should be submitted to Region/District R/W Local Programs Coordinator with the facts justifying the proposed action. The request may be made in writing, in person, or in emergency situations by telephone.

Region/District R/W can approve all standard form Agreements for Possession and Use or Rights of Entry. All nonstandard agreements shall be forwarded to the HQ R/W Local Programs for approval. The LPA will be notified of the acceptance of their request in writing. LPA Certifications containing such agreements should include a reference to the prior approval. Certifications where all or a major portion of the parcel are controlled through these types of agreements shall be avoided except when public safety or emergency projects are involved.

17.08.14.04 **Status of Affected Railroad Facilities**

The "Affected Railroad Facilities" portion of the Right of Way Certification applies to a railroad's "operating property" only. The railroad determines which of their properties are "operating" or "nonoperating." Acquisition of railroad operating property will also be covered under Section 1 of the Certification, "Status of Required Right of Way."

A Clearance Letter from the Department's Office of Structures is required for ANY project with railroad involvement that is advertised by the State Office of the Office Engineer, even when the railroad arrangements were made by an LPA. Refer to Chapter 14, "Project Certification," in this Manual for additional information.

17.08.14.05 **Material and Disposal Sites**

List in the Right of Way Certification all optional or mandatory material or disposal sites which require a Local-Agency-secured agreement and which are being made available for use for the project being certified.

On some projects, bidders are advised of "available" sites that have been previously tested and approved for use. Contractors make their own arrangements for use of such sites. These sites are listed on the Right of Way Certification when the project does not require a previously secured agreement with the site Owner.

17.08.14.06 **Status of Required Utility Relocations**

An LPA Right of Way Certification is not to be issued until it can be stated that either there are no required utility relocations, the state will handle the utility relocation, or the LPA will handle the utility relocation. Use one or more of the clauses found in Chapter 14, "Project Certification," in this Manual to complete the Utility Portion of the Certification.

17.08.14.07 **High and Low Risk Underground Facilities**

A statement concerning High and Low Risk Underground Facilities is no longer required in the Certification. The Office of Project Planning and Design is responsible for administration of the High and Low Risk policy.

17.08.14.08 **Right of Way Clearance**

The LPA Right of Way Certification requires information concerning the disposition of improvements. Refer to Chapter 14, "Project Certification," of this Manual for appropriate clauses.

17.08.14.09 **Compliance with Relocation Assistance Program Requirements**

This section provides assurances that current policy and procedure have been followed relative to relocation advisory assistance payments. Detailed data regarding any remaining occupants and/or personal property are also provided. (See also requirements for Special Certification No. 3 With Work-Arounds.)

17.08.14.10 **Cooperative Agreements**

This is an optional section used as a check to ensure that needed Cooperative Agreements have been secured.

17.08.14.11 **Certification - Authorized Signature**

The LPA Right of Way Certification should be submitted with a resolution by the governing body that authorizes execution of the document. As an alternative, the appropriate agency, e.g., County Board of Supervisors or City Council, may adopt a resolution giving the Chairman of the Board, Mayor of the City, Public Works Director, Transportation or Traffic Authority or other responsible official a blanket authority to execute Right of Way Certifications. Certifications executed by this official would then be acceptable. If this second alternative is used, a copy of the original resolution need not accompany each Certification submitted to the Region/District. It will be sufficient to have a copy of the original resolution on file in the Region/District.

In the cases when the Region/District will recertify the project, e.g., the state is doing part of the work, the Region/District Right of Way Certification will be issued over the signature of the Region/District Division Chief, R/W, or designee.

17.08.14.12 **Indemnification by Local Agency for On-System Projects**

The Department reviews and approves only those LPA Right of Way Certifications prepared for projects where Department advertises, awards, and administers the contract. As in the case with off-system projects, all other LPA-prepared Right of Way Certifications are "accepted" by the Department. It is, therefore, important that the LPA certify that any right of way acquired for a project which will subsequently be conveyed to the Department be acquired in accordance with our own policies and procedures. Use of this clause reaffirms that the LPA has overall responsibility and accountability for proper project certification.

Use of the "Indemnification by Local Agency" clause is required in all LPA Right of Way Certifications and has been incorporated into the Certification exhibits.

NOTES: